Richard M. Garbarini (RG 5496)
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New York, New York 10177
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Facsimile: (347) 218-9478

Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---x
YESH MUSIC, LLC,

Plaintiff,

v.

MOTLEY CRUE, INC.,

Defendant,
---x

Index No.: 17-cv-4825

COMPLAINT AND JURY DEMAND FOR DAMAGES FOR COPYRIGHT INFRINGEMENT

Plaintiff YESH MUSIC, LLC, by and through its attorneys at GARBARINI FITZGERALD P.C., brings this Complaint and Jury Demand against defendant MOTLEY CRUE, INC. based on its intentional infringement of plaintiff's copyrighted musical work "*Lights Dim*" (the "Copyrighted Composition") which appears on the album *A Memory Stream*, U.S. Copyright Registration PAU 3-452-712 (the "Copyrighted Composition"), pursuant to the Copyright Act and Copyright Revisions Act, 17 U.S.C. §§ 101 et seq. (the "Copyright Act" or "Act").

PARTIES

1. At all times material hereto, plaintiff Yesh Music, LLC ("YESH") was, and is, a limited liability company organized under the laws of the State of New York, with its principal offices located at 75-10 197th Street, Flushing, New York. YESH is engaged in the business of

music publishing and otherwise commercially exploiting its copyrighted sound recordings which originate from the band *The American Dollar*. The sole members of plaintiff are Richard Cupolo and John Emanuele; the artists in *The American Dollar*.

2. A copy of the certificate issued by the U.S. Copyright Office to plaintiff for *A Memory Stream* and the assignment of same which was registered with the U.S. Copyright Office are annexed and incorporated hereto respectively as **Exhibit 1.**

3. Plaintiff is informed and believes, and on that basis avers, Defendant MOTLEY CRUE, INC. (MOTLEY CRUE) is a California corporation with its principal place of business in the State of California. MOTLEY CRUE has an office located at 38 West 21st Street, Suite 300, New York, New York, 10010, and it may be served with process in this action by service of the Summons and Complaint on its agent at such address

4. Plaintiff is informed and believes, and on that basis avers, MOTLEY CRUE is the corporate shell for a popular American heavy metal band named "MÖTLEY CRÜE", founded by Nikki Sixx, Tommy Lee, Vince Neil, and Mick Mars. MOTLEY CRUE has sold more than one-hundred million records worldwide and has a place of business at 38 West 21st Street, Suite 300, New York, New York, 10010.

JURISDICTION

5. The jurisdiction of this Court is based upon 28 U.S.C. §§ 1331 and 1338 in that this controversy arises under the Copyright Act and Copyright Revision Act of 1976 (17 U.S.C. § 101 et seq.). This action is a civil action over which this court has original jurisdiction.

Personal Jurisdiction - CPLR § 302(a)(1)

6. This Court has personal jurisdiction pursuant to CPLR § 302(a)(1).

7. MOTLEY CRUE regularly solicits business in this Judicial District.

8. MOTLEY CRUE maintains an office 38 West 21st Street, Suite 300, New York, NY 10010.

9. MOTLEY CRUE's brand manager, 10th Street Entertainment, Inc. is a New York corporation with a principal place of business located at 38 West 21st Street, Suite 300, New York, NY 10010.

10. MOTLEY CRUE's record label, Eleven Seven Music Group (or 11-7 Music Group), is located at 38 West 21st Street - Suite 300, New York, NY 10010.

11. The Uniform Product Code's (UPC) for each MOTLEY CRUE recording, including, *Kickstart My Heart*, is registered to 11-7 Music Group at 38 West 21st Street - Suite 300, New York, NY 10010.

12. MOTLEY CRUE regularly performs in New York including a recent engagement at The Barclays Center in Brooklyn.

13. Defendant contracts with New York on a regular basis.

14. Being that defendant transacts business within the state or contracts anywhere to supply goods or services in the state – this Court has jurisdiction pursuant to CPLR § 302 (a)(1).

This Court Has Jurisdiction Pursuant to CPLR § 302(a)(3)

15. CPLR § 302 (a)(3) authorizes this Court to exercise jurisdiction over nondomiciliaries who commit a tortious act without the state causing injury to person or property within the state, except as to a cause of action for defamation of character arising from the act, if it: (i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state, or (ii) expects or should reasonably expect the act to have consequences in the state and derives substantial revenue from interstate or international commerce.

16. MOTLEY CRUE synchronized, reproduced, and distributed a video synchronizing plaintiff's copyrighted recoding "*Lights Dim*" through YouTube and other internet channels. This is a tort (copyright infringement) committed within the state.

17. The copyright owner resides in this Queens, NY.

18. Defendant regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered, in the state.

19. Jurisdiction is conferred pursuant to CPLR 302(a)(3) subsection (i).

VENUE

20. Venue in this District is proper under 28 U.S.C. § 1391(b) and (c) and/or 28 U.S.C. § 1400(a).

21. Plaintiff has the right to bring the within action pursuant to 17 U.S.C. § 501(b).

22. Plaintiff's copyrighted recordings were registered prior to the alleged infringement, and satisfy the registration prerequisite under 17 U.S.C. 412(c).

FACTS

23. On or about May 1, 2017, plaintiff discovered defendant's music video titled "Motley Crue - *Kickstart My Hear*t - Official 2011 Tour Version" (the "Subject Video").

24. Defendant copied and synchronized plaintiff's copyrighted composition "*Lights Dim*" from the start of the Subject Video to minute 0:58. Plaintiff's copyrighted composition plays as the staff sets up the stage and equipment, until 0:58 when plaintiff's copyrighted composition is interrupted by MOTLEY CRUE's recording titled "*Kickstart My Heart*".

25. Defendant then distributed the Subject Video through its personalized "Mötley Crüe YouTube Channel" which can be found on YouTube at

<https://www.youtube.com/watch?v=p5em6PisRyk>=, where it has been viewed 1,560,530 times.

26. Defendant was contacted, through its attorney at Alexander Sasha Frid at Miller Barondess, LLP on May 20, 2017, by correspondence sent by email to sfrid@millerbarondess.com, and informed there was no license for the subject use.

27. Defendant elected to ignore plaintiff's notice and continue to the date of this Complaint to display the Subject Video on its personalized Mötley Crüe YouTube Channel.

28. The Subject Video has been reproduced by numerous individuals and distributed by these individuals on YouTube and other video outlets like Vimeo.

29. Plaintiff controls, by assignment, the copyrighted musical recordings of the band The American Dollar.

30. The American Dollar creates ambient recordings, and what has been described as an "atmospheric brand of cinematic post-rock."

31. YESH generates approximately 50% of its revenue from licensing its recordings to traditional companies, like:

Motion Pictures	**Production Company**
Extremely Loud & Incredibly Close	Warner Brothers
Up In The Air	Paramount Pictures
Coast Modern	Two Fold Film
Damnation	Felt Soul Media
Eastern Rises	Felt Soul Media

Officer Down	Felt Soul Media
Yami no Ichi Nichi	Mario Junn
Nuclear Family	Ian Hawkins

Television Program	Production Company
CSI: Miami	CBS/Paramount
Spring Watch	Fox Television
Nike Battlegrounds	MTV/Viacom
Real World/Road Rules	Bunim Murray/MTV
Red Band Society	Fox Television
Hawthorne	TNT Networks
Human Planet	Discovery Network
Outside Today	Outside TV
Mrs. Eastwood & Co	Bunim Murray/MTV
Teen Mom	MTV/Viacom
Sixteen and Pregnant	MTV/Viacom
Keeping Up With The Kardashians	Bunim Murray/E Television
Alaska: The Last Frontier	Discovery Networks
The Vineyard	ABC Family
Gott und die Welt	German TV ARD
America's Psychic Challenge	Bunim Murray Productions
Caged	MTV/Viacom
True Life	MTV/Viacom
This Is How I Made It	MTV/Viacom
TO Show	VH1/Viacom
Styl'd	MTV/Viacom

Life of Ryan	MTV/Viacom
If You Really Knew Me	MTV/Viacom
Taboo Nation	National Geographic
Shahs of Sunset	Ryan Seacrest Productions
How I Rock It	Ryan Seacrest Productions
Popland	MTV/Viacom

Commercials	Company
Infiniti Automobile	Infiniti Automobiles
Samsung Smart TV	Samsung
GoPro Camera	GoPro Cameras
Elle Magazine UK | Dubai Teaser	Elle Magazine UK
Pre-Auction Statement	Leonardo DiCaprio Foundation
Subaru Online Advertisement	Subaru (Switzerland)
Burton Snowboard	Burton Snowboards
O'Neill Europe Advertisements	O'Neill Europe
Dove Soap	Dove Soap
DC Shoes	DC Shoes
Converse Web	Converse
NBA Playoffs Commercial	ESPN
CanonOptics Advertisement	CanonOptics / Burton
Telluride Tourism Board	Telluride Tourism Board
Unit Clothing	Unit Clothing Enter.
Viasat Baltics	Viasat Baltics
Morgan Stanley	Morgan Stanley/Chief Ent.

Video Game	Company
The Amazing Spiderman	Activision

32. Plaintiff's forced association with a heavy metal band has devalued its brand and injured its ability to license the Copyrighted Composition.

FIRST CLAIM FOR RELIEF
COPYRIGHT INFRINGEMENT

33. Plaintiff incorporates the allegations contained in the preceding paragraphs as if set forth at length here.

34. Defendant has, without a synchronization, or any other, license synchronized plaintiff's copyrighted recording "*Lights Dim*", to its music video titled "Motley Crue - *Kickstart My Hear*t - Official 2011 Tour Version".

35. Defendant, without license or authority, reproduced and distributed the Subject Video which synchronizes plaintiff's Copyrighted Composition through its YouTube channel and other websites where it has been viewed over 1.5 million times.

36. It cannot be disputed plaintiff has a valid, registered copyright, for each recording, and that defendant has synchronized, reproduced, and distributed plaintiff's copyrighted recordings without a license, thus infringing plaintiff's rights under the Copyright Act.

37. Irreparable injury is presumed here as plaintiff has established a prima facie case of copyright infringement.

38. Even after defendant was put on notice of the infringement over one month before the date of this Complaint; it elected to continue to synchronize, reproduce, distribute, and publicly perform the Copyrighted Recording.

39. The synchronization, reproduction, and/or distribution, of the Copyrighted Recording was clearly intentional within the meaning of 17 U.S.C. § 504(c)(2) for the purposes of enhancing statutory damages.

40. Defendant's knowledge may be inferred from its conduct as well as its reckless disregard of plaintiff's rights (rather than actual knowledge of infringement), which suffices to warrant award of the enhanced damages.

41. As a direct and proximate result of defendant's infringement, plaintiff has incurred actual damages in the form of lost licensing fees and the devaluation of its brand due to the forced association with defendant.

42. Plaintiff may recover its actual damages, and defendant's profit to be determined at trial. Plaintiff may also elect to recover statutory damages pursuant to 17 U.S.C. § 504(c)(2) for willful infringement of up to $150,000, but not less than $30,000.

43. Plaintiff also seeks its attorneys' fees and costs, as well as pre-post judgment interest.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays this Court enter an order awarding plaintiff:

1) restitution of defendant's unlawful proceeds, including defendant's gross profits;

2) compensatory damages to plaintiff in an amount to be ascertained at trial;

3) one statutory damage award, including but not limited to all penalties authorized by the Copyright Act (17 U.S.C. §§ 504(c)(1), and 504(c)(2)) at plaintiff's election;

4) plaintiff's reasonable attorneys' fees and costs (17 U.S.C. § 505);

5) pre- and post-judgment interest to the extent allowable; and,

6) such other and further relief that the Court may deem just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: June 26, 2017

GARBARINI FITZGERALD P.C.

By: [signature]
Richard M. Garbarini

Exhibit 1

Certificate of Registration

This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Marybeth Peters

Register of Copyrights, United States of America

Registration Number
PAu 3-452-712

Effective date of registration:
April 25, 2008

Title

Title of Work: A Memory Stream
Nature of Work: Instrumental Music

Completion/ Publication

Year of Completion: 2008

Author

- **Author:** John Keith Emanuele
  Author Created: Co-Writer and Co-Owner of Copyrights
  Work made for hire: No
  Citizen of: United States
  Year Born: 1984
  Anonymous: No **Pseudonymous:** No
- **Author:** Richard Thomas Cupolo
  Author Created: Co-Writer and Co-Owner of Conyrights
  Work made for hire: No
  Citizen of: United States
  Year Born: 1984
  Anonymous: No **Pseudonymous:** No

Copyright claimant

Copyright Claimant: John K. Emannele
75-10 197 Street, 2nd Floor, Flushing, NY, 11366

Limitation of copyright claim

Previously registered: No

Certification

Name: John K. Ernanuele

Date: March 5, 2008

Copyright Office notes: Regarding author information: Deposit contains music.

Registration #: PAU003452712

Service Request #: 1-65320963

John K. Emannele
75-10 197 Street, 2nd Floor
Flushing, NY 11366

RECORDED DOCUMENTS **FL-10A**

DATE: February 20, 2014

Yesh Music LLC
75-10 197 Street
Flushing, NY 11366

ATTN: Gentlemen

We have recorded the enclosed document(s) in the official records of the Copyright Office:

VOLUME	3619
DOC. NO.	745-746

The recording fee has been handled as follows:

RECEIVED	$
APPLIED	$
REFUNDED (under separate cover)	$
CHARGED TO YOUR DEPOSIT ACCOUNT	**$**

Sincerely yours,

Register of Copyrights

ENCL(S):

DOC(S): 2

Library of Congress
U.S. Copyright Office
101 Independence Avenue SE
Washington, DC 20559-6000
www.copyright.gov

SEAL OF THE UNITED STATES COPYRIGHT OFFICE 1870

Certificate of Recordation

This is to certify that the attached document was recorded in the Copyright Office on the date and in the place shown below.

This certificate is issued under the seal of the United States Copyright Office.

DATE OF RECORDATION

17Oct12

VOLUME	DOC. NO.
3619	745
VOLUME	DOC. NO.

Maria A. Pallante

Register of Copyrights, United States of America

Document Cover Sheet
united states copyright office

For Recordation of Documents

Volume 3619 *Document* 745

Volume ______ *Document* ______

Date of recordation M OCT 17 2012
(ASSIGNED BY THE COPYRIGHT OFFICE)

Funds received ______

Privacy Act Notice: Sections 408-410 of title 17 of the *United States Code* authorize the Copyright Office to collect the personally identifying information requested on this form in order to process the application for copyright registration. By providing this information you are agreeing to routine uses of the information that include publication to give legal notice of your copyright claim as required by 17 U.S.C. §705. It will appear in the Office's online catalog. If you do not provide the information requested, registration may be refused or delayed, and you may not be entitled to certain relief, remedies, and benefits under the copyright law.

DO NOT WRITE ABOVE THIS LINE · SEE INSTRUCTIONS ON REVERSE

To the Register of Copyrights: Please record the accompanying original document or its properly certified copy.

1 First party name given in the document: Richard Thomas Cupolo
(IMPORTANT: *Please read instruction for this and other spaces.*)

2 First title given in the document: A Memory Stream - PAu 3-452-712

3 Total number of titles in the document: 13

4 Amount of fee calculated: $135.00

5 Fee enclosed
- [x] Check
- [ ] Money order
- [ ] Fee authorized to be charged to Copyright Office deposit account

Deposit account number ______

Deposit account name ______

6 Completeness of document
- [x] Document is complete by its own terms
- [ ] Document is not complete. Record "as is."

IMPORTANT NOTE: *A request to record a document "as is" under 37 CFR §201.4(c)(2) is an assertion that: (a) the attachment is completely unavailable for recordation; (b) the attachment is not essential to the identification of the subject matter of the document; and (c) it would be impossible or wholly impracticable to have the parties to the document sign or initial a deletion of the reference to the attachment.*

7 Certification of photocopied document

Complete this certification if a photocopy of the original signed document is substituted for a document bearing the actual original signature.

NOTE: ***This space may not be used for documents that require an official certification.***

I declare under penalty of perjury that the accompanying document is a true and correct copy of the original document.

Signature ______ Date ______

Duly authorized agent of ______

8 Return to

Name Yesh Music LLC

Number/street 75-10 197 Street Apt/suite 2nd Floor

City Flushing State NY Zip 11366

Phone number 646.552.3011 Fax number n/a

Email americandollarband@yahoo.com

SEND TO: *Library of Congress, Copyright Office-DOC, 101 Independence Avenue SE, Washington, DC 20559*

INCLUDE ALL THESE TOGETHER: (1) two copies of this form; (2) payment from a deposit account or by check/money order payable to *Register of Copyrights;* and (3) your document.

V3619 D745

COPYRIGHT ASSIGNMENT

Author: Richard Thomas Cupolo

Address: 15 Middleton Rd., Garden City, New York

V3619 D745
Page 1

FOR GOOD AND VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby acknowledged, Author hereby transfers and assigns to Yesh Music LLC (hereafter "YESH"), located at 75-10 197th St., Flushing, New York, and to YESH's successors and assigns in perpetuity, One Hundred Percent (100%) of the entire right, title and interest in and to:

1. the copyright to Author's contribution (hereafter referred to as the "Contribution" and which is more specifically defined below) to the below works (hereafter, "the Works");

   A LONG GOODBYE – SELF-TITLED ALBUM BONUS TRACK
   A MEMORY STREAM
   AMBIENT ONE
   AMBIENT TWO
   AMBIENT THREE
   ATLAS
   AWAKE IN THE CITY
   BSIDES
   FROM THE INLAND SEA
   LIVE IN BROOKLYN
   NEAR EAST – ATLAS BONUS TRACK
   THE AMERICAN DOLLAR
   THE TECHNICOLOUR SLEEP

2. the Author's interest in and to the below Copyright Registrations, along with any renewals and extensions thereof, relating to the Contribution or the Works;

COPYRIGHT REG. NO.	TITLE OF COPYRIGHTED WORK
PAu 3-452-712	A MEMORY STREAM
SR 677-648	AMBIENT ONE
SR 679-263	AMBIENT TWO
SRu 1-084-375	AMBIENT THREE
SR 677-194	ATLAS
SR 677-647	FROM THE INLAND SEA
SR 677-646	LIVE IN BROOKLYN
PA 1-306-744	THE AMERICAN DOLLAR
PA 1-346-426	THE TECHNICOLOUR SLEEP

3. any copyright applications presently pending at the time of execution of this agreement and any resulting registrations therefrom;

4. all works based upon, derived from, or incorporating the Contribution;

5. all income, royalties, damages, claims and payments now or hereafter due or payable with respect to the Contribution or the Works;

RICHARD THOMAS CUPOLO to YESH MUSIC LLC

V3619 D745
Page 2

6. all causes of action, either in law or in equity, for past, present, or future infringement of copyright related to the Works, and

7. all rights corresponding to any of the foregoing, throughout the world.

The Author's Contribution consists of authorship of the Works, including music, lyrics, recording production, sound recordings, performance rights and any and all other authorship interests of any kind, now vested and contingent therein. The other author of the Works is John Keith Emanuele.

This Assignment includes the assignment of all rights, including copyright, to any modifications or other alterations to the Works or the Contribution that the Author makes under this Agreement or any other agreement between the Author and YESH.

IN WITNESS THEREOF, Author duly executes this Agreement.

By:____________________
Richard Thomas Cupolo ("Author")

10/11/12
Date

STATE OF NEW YORK)
) SS.:
COUNTY OF Nassau)

Before me on this 11th day of October, 2012, personally appeared Richard Thomas Cupolo, to me known to be the person who is described in and who executed the foregoing assignment instrument and acknowledged to me that he executed the same of his own free will for the purpose therein express.

____
NOTARY PUBLIC

KARREN E. PALERMO
NOTARY PUBLIC, State of New York
No. 30-4653032
Qualified in Nassau County
Commission Expires 3/31/13

Certificate of Recordation

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This certificate is issued under the seal of the United States Copyright Office.

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17Oct12	
VOLUME	DOC. NO.
3619	746
VOLUME	DOC. NO.

Maria A. Pallante

Register of Copyrights, United States of America

C-762 · 06/2011—4,000

Document Cover Sheet
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Phone number 646.552.3011 Fax number n/a

Email americandollarband@yahoo.com

SEND TO: *Library of Congress, Copyright Office-DOC, 101 Independence Avenue SE, Washington, DC 20559*

INCLUDE ALL THESE TOGETHER: (1) two copies of this form; (2) payment from a deposit account or by check/money order payable to *Register of Copyrights;* and (3) your document.

FORM DCS REVIEWED: 07/2012 Printed on recycled paper

COPYRIGHT ASSIGNMENT

Author: John Keith Emanuele

Address: 75-10 197th St., Flushing, New York

FOR GOOD AND VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby acknowledged, Author hereby transfers and assigns to Yesh Music LLC (hereafter "YESH"), located at 75-10 197th St., Flushing, New York, and to YESH's successors and assigns in perpetuity, One Hundred Percent (100%) of the entire right, title and interest in and to:

1. the copyright to Author's contribution (hereafter referred to as the "Contribution" and which is more specifically defined below) to the below works (hereafter, "the Works");

   A LONG GOODBYE – SELF-TITLED ALBUM BONUS TRACK
   A MEMORY STREAM
   AMBIENT ONE
   AMBIENT TWO
   AMBIENT THREE
   ATLAS
   AWAKE IN THE CITY
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   LIVE IN BROOKLYN
   NEAR EAST – ATLAS BONUS TRACK
   THE AMERICAN DOLLAR
   THE TECHNICOLOUR SLEEP

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PA 1-306-744	THE AMERICAN DOLLAR
PA 1-346-426	THE TECHNICOLOUR SLEEP

3. any copyright applications presently pending at the time of execution of this agreement and any resulting registrations therefrom;

4. all works based upon, derived from, or incorporating the Contribution;

5. all income, royalties, damages, claims and payments now or hereafter due or payable with respect to the Contribution or the Works;

JOHN KEITH EMANUELE to YESH MUSIC LLC

V3619 D746
Page 2

6. all causes of action, either in law or in equity, for past, present, or future infringement of copyright related to the Works, and

7. all rights corresponding to any of the foregoing, throughout the world.

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This Assignment includes the assignment of all rights, including copyright, to any modifications or other alterations to the Works or the Contribution that the Author makes under this Agreement or any other agreement between the Author and YESH.

IN WITNESS THEREOF, Author duly executes this Agreement.

By: ______________________
John Keith Emanuele ("Author")

10/11/12
Date

STATE OF NEW YORK)
) SS.:
COUNTY OF Nassau)

Before me on this 11th day of October, 2012, personally appeared John Keith Emanuele, to me known to be the person who is described in and who executed the foregoing assignment instrument and acknowledged to me that he executed the same of his own free will for the purpose therein express.

Karren E Palermo
NOTARY PUBLIC

KARREN E. PALERMO
NOTARY PUBLIC, State of New York
No. 30-4653032
Qualified in Nassau County
Commission Expires 8/31/13